

No.

24-6266

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

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OFFICE OF THE CLERK  
SUPREME COURT, U.S.

Jody Lee Miles

(Your Name)

— PETITIONER

vs.

State of Maryland

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Appellate Court of Maryland

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jody Lee Miles #272901

(Your Name)

North Branch Correctional Institution

14100 McMillen Hwy, S.W.

(Address)

Cumberland, Maryland 21502

(City, State, Zip Code)

N/A

(Phone Number)

### **QUESTION(S) PRESENTED**

Does the doctrine of the separation of powers as derived from the text and structure of the Constitution of the United States allow for an act of mock clemency in which a member of the executive branch, on his or her own initiative and against a defendant's will, interferes with ongoing court proceedings and commutes that defendant's illegal sentence to its functional equivalent in order to prevent its review and significant reduction by the courts?

When a president or governor, on his or her own initiative and against a defendant's will, interferes with court proceedings to the sole detriment of that defendant by commuting that defendant's illegal sentence to its functional equivalent, do the courts need to place this defendant in the same favorable position as if the president or governor had never interfered?

### LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

### RELATED CASES

Miles v Hogan, No. 21167, Maryland Court of Special Appeals. Judgment entered Feb. 12, 2018.

Miles v. State, No. 1528, Appellate Court of Maryland. Judgment Entered May 29, 2024

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was September 25, 2024.  
A copy of that decision appears at Appendix D.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **U.S. Const. art. I, § 1**

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

### **U.S. Const. art. II, § 1**

The executive Power shall be vested in a President of the United States of America. [...]

### **U.S. Const. art. III, § 1**

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. [...]

(Please note: The constitutional issue in this case involves the doctrine of the separation of powers. The Sections of the foregoing two Articles were abbreviated as the text provided already shows the distinction between the legislative, the executive and the judicial branches of the government. For reasons of efficiency, Petitioner also omits the corresponding Articles in the Constitution of Maryland which has, as any constitution in a modern democracy, the same distinction. Petitioner will, at least at this point, only refer to the Constitution of the United States in his argumentation.)

### **U.S. Const. amend. XIV, § 1**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### **Md. Crim. Causes. 4-345(a) (Maryland Rule 4-345(a))**

Illegal Sentence.

The court may correct an illegal sentence at any time.



**Md. Crim. Causes. 4-345(e) (Maryland Rule 4-345(e))**

**Modification Upon Motion.**

(1) *Generally.* Upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

Cross reference: Rule 7-112(b).

Committee note: The court at any time may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Maryland Department of Health if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification or timely filed a motion for modification that was denied. See Code, Health--General Article, § 8-507.

(2) *Notice to Victims.* The State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, § 11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, § 11-503 that states (A) that a motion to modify or reduce a sentence has been filed; (B) that the motion has been denied without a hearing or the date, time, and location of the hearing; and (C) if a hearing is to be held, that each victim or victim's representative may attend and testify.

(3) *Inquiry by Court.* Before considering a motion under this Rule, the court shall inquire if a victim or victim's representative is present. If one is present, the court shall allow the victim or victim's representative to be heard as allowed by law. If a victim or victim's representative is not present and the case is one in which there was a victim, the court shall inquire of the State's Attorney on the record regarding any justification for the victim or victim's representative not being present, as set forth in Code, Criminal Procedure Article, § 11-403(e). If no justification is asserted or the court is not satisfied by an asserted justification, the court may postpone the hearing.

**Md. Code, Corr. Servs. § 7-101(d)**

"Commutation of sentence" means an act of clemency in which the Governor, by order, substitutes a lesser penalty for the grantee's offense for the penalty imposed by the court in which the grantee was convicted."

## STATEMENT OF THE CASE

1. A president's or governor's right to grant clemency cannot be valued highly enough. Mercy, not mere justice, makes a human system truly humane and who can claim to never be in need of forgiveness?
2. It is therefore utterly concerning when a governor implores this right to take the initiative to actively hurt a defendant.
3. In Petitioner's case, the Governor of Maryland, against Petitioner's outspoken will, commuted Petitioner's death sentence to life without parole on January 15<sup>th</sup>, 2015. At this time, the Attorney General of Maryland had already conceded that Petitioner's death sentence became illegal due to a change in law.
4. The Governor acted without necessity: Petitioner was in no need of clemency since his illegal sentence would have been changed by the courts and the worst possible outcome of these court proceedings would have been life without parole. An illegal death sentence, i.e., a death sentence that cannot be carried out anymore, is *de facto* a natural life sentence.
5. Moreover, the Governor acted to the sole detriment of Petitioner and was fully made aware of this fact in advance by Petitioner's then-Counsel: After the Governor's commutation of sentence, court proceedings that could have led to a lesser sentence than life without parole were discontinued.
6. The Governor's unrequested commutation of sentence was challenged in the courts by then-Counsel for Petitioner. While the courts came to the conclusion that the commutation of sentence was legal, a judge in the Circuit Court for Queen Anne's County made the decision

to not change the court records. Petitioner is, in the Circuit Court for Queen Anne's County, still under an illegal death sentence.

7. In August 2023, Petitioner filed *pro se* a Motion for Modification of Sentence under Maryland Rule 4-345(e) and following *Greco v. State*, 347 Md. 423 (1997). Maryland Rule 4-345(e) partially reads as follows:

[...] Upon a motion filed within 90 days after imposition of a sentence [...] in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence. [...]

8. In its Response dated September 11<sup>th</sup>, 2023, the State argued that Petitioner's time to file a motion for modification under Maryland Rule 4-345(e) had elapsed as the sentence was imposed on Petitioner on January 15<sup>th</sup>, 2015. In a footnote, the State conceded that the court could come to another conclusion with regard to the date of the imposition of the sentence, namely that the sentence was imposed at the trial, on March 19<sup>th</sup>, 1998.
9. Petitioner's Motion for Modification of Sentence was denied on September 11<sup>th</sup>, 2023.
10. On appeal, Petitioner argued *inter alia* that it was not clear whether the sentence of life without the possibility of parole was ever imposed on him. The State had previously argued that governors did not impose sentences.
11. In this context, the State then claimed that no imposition of sentence was needed with a commutation. Consequently, in the State's opinion, Petitioner *never* had the right to file a motion for modification of sentence under Maryland Rule 4-345(e) after his change of sentence.

12. In his Reply Brief, Petitioner referred to the constitutional doctrine of the separation of powers that aims to protect individuals from arbitrary and oppressive actions by those in power. Petitioner had already been deprived of his right to fight for a sentence that allowed for parole after his death sentence became illegal. As the natural life sentence was never imposed on him, he was then also deprived of his right to file a motion for modification under Maryland Rule 4-345(e) which he definitely would have had, following *Greco v. State*, 347 Md. 423 (1997), had the courts – and not the Governor – changed his sentence.

13. On May 29<sup>th</sup>, 2024, the Appellate Court of Maryland affirmed the decision of the Circuit Court of Queen Anne's County. The Court gave the following reasons for its decision:

Mr. Miles does not cite any authority that required the court to hold a hearing on the motion "in the interest of justice." Mr. Miles also does not cite any authority that required the circuit court to somehow "implement" the Governor's commutation of the sentence of death in order for the resulting sentence of life imprisonment without the possibility of parole to be legal.

14. Petitioner, who is not a lawyer and who lost his right to counsel after the commutation of his sentence, then timely filed a Motion for Reconsideration, citing statutes and case law in support of his position. This Motion for Reconsideration was denied by the Appellate Court of Maryland on July 10<sup>th</sup>, 2024.

15. Petitioner's timely filed Petition for Writ of Certiorari to the Supreme Court of Maryland asked review of the following two issues:

When a governor, on his own initiative, interferes with court proceedings to the sole detriment of a defendant by commuting an illegal sentence to its functional equivalent, do the courts need to place that defendant in the same favorable position as if the governor had never interfered?

Is the Circuit Court required to implement the Governor's change of sentence?

As reasons for granting the review Petitioner stated:

An individual's constitutional right to be protected from arbitrary and oppressive actions by those in power is a matter of great public concern, in particular when the most fundamental rights – life and freedom – are affected. It is essential for any democracy that a governor's right to commute a sentence remains bound to clemency and is not distorted into a means of oppression that could target political opponents or personal enemies.

An individual's right to know what sentence he or she is serving and when it was imposed is a matter of great public concern as it directly affects this individual's right to know and exercise his or her rights.

On September 26<sup>th</sup>, 2024, the Supreme Court of Maryland denied discretionary review.

16. The courts clearly erred in their decisions as they allow a governor, by commuting a defendant's illegal sentence to its functional equivalent, to arbitrarily deprive a defendant of rights.
17. This is unconstitutional on two grounds. Firstly, under the Equal Protection Clause of the Fourteenth Amendment, Petitioner has the right to be treated in the same way as any other defendant with an illegal sentence. He cannot be treated differently where there is "no rational basis for the difference in treatment." (*Village of Willowbrook v. Olech*, 528 U.S. 562 (2000))
18. Secondly, the doctrine of the separation of powers, as derived from the text and structure of the Constitution of the United States, seeks to protect individuals from arbitrariness and oppression.

The Framers' experience with the British monarchy informed their belief that concentrating distinct governmental powers in a single entity would subject the nation's people to arbitrary and oppressive government action. (underlining added)<sup>1</sup>

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<sup>1</sup> *Constitution Annotated, Intro.7.2 Separation of Powers Under the Constitution*, CONGRESS.GOV, [https://constitution.congress.gov/browse/essay/intro-2-2-2/ALDE\\_00000031/](https://constitution.congress.gov/browse/essay/intro-2-2-2/ALDE_00000031/) (last accessed on Oct. 27, 2024).

This is why there are three different branches of the government (U.S. Const. art. I, § 1, U.S. Const. art. II, § 1, U.S. Const. art. III, § 1). The sentencing of defendants in criminal cases is a core function of the judicial branch.

19. While “the design of the Constitution contemplates some overlap in the branches’ performance of government functions,”<sup>2</sup> it is clear that this overlap cannot contradict the intention of the doctrine of separation of powers, namely the protection against arbitrary and oppressive government action. This means that a governor can only reduce a defendant’s sentence with the intention to do that defendant a favor. By commuting an illegal sentence, the Governor in the present case actually sentenced Petitioner and thus infringed upon the core functions of the judicial branch.
20. Illegal sentences are changed by the courts. For this purpose, the Maryland Code foresees the possibility to file motions to correct illegal sentences (Maryland Rule 4-345(a)). The change of an illegal sentence is a matter of right.
21. Clemency, however, is not a matter of right. Nobody has a right to clemency. It is a free gift by the grantor and always involves some kind of benefit to the grantee. Therefore, a governor can grant clemency to one person and not to another one. One could argue that a governor has the right to act arbitrarily when denying someone clemency (which would still be against reason and the honorability of the office). However, it is clear that a governor has no right to act in an arbitrary and oppressive way when granting clemency, because this is a contradiction in itself.

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<sup>2</sup> *Ibid.*

22. The Maryland Code defines "commutation of sentence" as an "act of clemency" (Md. Code, Corr. Servs. § 7-101 (d)). Therefore, a governor who uses the right to commute a sentence to actively and intentionally harm a defendant abuses his or her power in doing so.
23. Unrequested commutations of illegal sentences that actively and intentionally harmed defendants occurred in multiple U.S. states and at different times. The real constitutional problem is, however, not the governors' commutations. After all, a governor could act with the best intentions and simply not be informed of the disastrous consequences his or her actions would have on the individual. The real constitutional problem is the courts' reactions to the governors' actions. No harm or injustice would occur if the courts considered the sentences that resulted from the unrequested commutations as a mere "safety net" under which a defendant cannot fall. However, in most – but not all – cases, the courts allowed these unrequested commutations to unfold their detrimental effects.
24. In 1977, for example, the Supreme Court of Tennessee, after death sentences for two defendants became illegal following a decision of the U.S. Supreme Court, decided as follows:
- In similar cases in the past, this Court has held that the proper procedure to be followed, where the death penalty cannot validly be carried out, is for the cause to be remanded for a new sentencing hearing before a jury. [...] Accordingly these cases are remanded to the respective trial courts from which they originated for a resentencing hearing, with punishment to be fixed in each case from twenty years to life imprisonment. (*Collins v. State*, 550 S.W.2d 643, 647 (Tenn. 1977))
25. Seven days after the issuance of this opinion, the Governor of Tennessee commuted the corresponding illegal death sentences to life imprisonment and the State filed a petition for rehearing.

26. The Supreme Court of Tennessee then reversed its decision. "Life imprisonment is a less severe penalty than death, and an accused has no basis for complaint." (*Collins v. State*, 550 S.W.2d 643, 647 (Tenn. 1977)) This argument is clearly wrong in this context. Not the comparison between life imprisonment and death is indicated here, but the comparison between a life sentence that is final and an illegal death sentence that cannot be carried out anymore. The illegal death sentence would have been reviewed and would have been changed to life imprisonment at the worst and only twenty years of incarceration at best.
27. This decision is therefore in conflict with the general rule, as referred to, for example, in *Cross v. Huff*, 208 Ga. 392, 67 S.E.2d 124 (1951) and *Robinson v. Lee*, 317 Md. 371 (1989), that the benefit of the doubt in favor of a defendant applies where there is ambiguity as to the defendant's sentence.
28. Also, in no other area would anyone say that someone should be thankful to still be alive after having been intentionally hurt. If a patient, for example, has a life-threatening wound on the leg, the doctor may contemplate its amputation in order to save the patient's life. However, as soon as the patient's life is not at stake anymore, the doctor is not allowed to amputate.
29. Without medical necessity, in particular under the protest of the patient, an amputation becomes a criminal act. The doctor cannot argue that the patient should be thankful to still be alive because, at one point, death was an option.
30. Just as a doctor cannot interfere with the healing process of a patient's body by taking debilitating measures until they become necessary, a governor cannot interfere with the judicial process by commuting a sentence until this action becomes necessary (in the interest of the defendant).



31. The decision of the Supreme Court of Tennessee was far from being unanimous. Justice Brock and Justice Cooper dissented, correctly referring to the prematurity of the Governor's actions:

[...] the Governor's actions were premature and unauthorized by law, and constitute an unwarranted interference with the judicial process. [...] The Governor has no power to impose sentence; he has power only to *diminish* the punishment provided by a sentence imposed by the courts. The power to commute a sentence can never properly be exercised until after the judgment of the courts has become final; until that time there is no sentence to be commuted. Any "commutation" before that time necessarily is an impermissible interference with the judicial process. (*Collins v. State*, 550 S.W.2d 643, 654-655 (Tenn. 1977))

32. A more recent decision of the Supreme Court of Iowa (*State v. Ragland*, 836 N.W. 2d 107 (Iowa 2013)) also contradicts the above-mentioned decision of the Supreme Court of Tennessee and the decisions of the state courts in Petitioner's case. The Governor of Iowa, claiming to fear the release of violent criminals into society, commuted Mr. Ragland's illegal sentence of life without parole to life with no possibility of parole for 60 years with no credit for earned time. Nevertheless, a resentencing hearing was held in which Mr. Ragland attacked both the sentence he received at trial and the sentence that resulted from the commutation. The evidence presented at that hearing showed that Mr. Ragland was no threat to society. He was resentenced to life with the possibility of parole after 25 years of incarceration.
33. The State appealed that decision and argued that Mr. Ragland should not have been resentenced as, in the State's view, after the commutation, Mr. Ragland's sentence was no longer illegal. The Supreme Court of Iowa, however, ruled in Mr. Ragland's favor.
34. The Supreme Court of Iowa did not allow an act of mock clemency to hurt a defendant. Mr. Ragland was placed in the same favorable position as if the governor had never interfered

with the court proceedings. This should always be the case where a member of the executive branch commutes a sentence without a request by the defendant.

35. This rule would protect both defendants as well as those governors or presidents who do not want to abuse their power. At the time of writing, President Biden, for example, is asked to commute all death sentences of those on federal and military death row.<sup>3</sup> This request comes from people such as Rev. Sharon Risher who have high moral values. Their intention is to save lives. President Biden should be able to fulfill their request without risking to hurt anyone.
36. In this context, Petitioner would also like to address the fear, as expressed by the Governor of Iowa when he commuted Mr. Ragland's sentence, that court review of sentences would lead to the release of violent and dangerous criminals into society.
37. As the Supreme Court of Iowa noted in its decision, the court that resentenced Mr. Ragland to life with the possibility of parole after 25 years thoroughly reviewed the evidence and concluded that Mr. Ragland's rehabilitation was successful. The Governor, however, made a decision about Mr. Ragland without considering any evidence. This is not a rational approach.<sup>4</sup>
38. Also, when the Governor bases his decision solely on a previous court decision to prevent a future court decision (and thus expresses suspicion with regard to court decisions), how does he know that the first court made the right decision?

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<sup>3</sup> Khaleda Rahman, *Joe Biden Urged to Prevent Death Row Execution Spree under Trump* (updated Nov. 7, 2024, 9:36 AM EST), NEWSWEEK.COM, <https://www.newsweek.com/joe-biden-urged-prevent-trump-death-row-execution-spree-1981920>.

<sup>4</sup> See, in this context, Jennifer Lackey, *The Irrationality of Natural Life Sentences*, NEWS.NORTHWESTERN.EDU (Feb. 1, 2016), <https://news.northwestern.edu/stories/2016/02/opinion-nytimes-life-sentences/>.

39. Courts definitely make mistakes. Exonerations show that innocent people get convicted, too, but not all innocent prisoners will be exonerated. Petitioner knows first-hand how difficult it is to successfully fight a wrongful conviction. Sometimes, the only option for wrongfully convicted prisoners to get a little bit of justice in *this* world is to fight their sentences. This right should not be taken away from them.

40. Moreover, even those prisoners who are actually guilty still have human dignity. They have a free will and can change. In his call for an end of the death penalty, which he characterizes as both cruel and unnecessary, Pope John Paul II points out that

the dignity of human life must never be taken away, even in the case of someone who has done great evil. Modern society has the means of protecting itself, without definitively denying criminals the chance to reform.<sup>5</sup>

41. It is this chance to reform that is denied by a natural life sentence as well. This sentence conflicts with human dignity in a similar way since it takes away all hope and nobody can live without hope. It is not surprising that Pope Francis calls this sentence a “secret death penalty.”<sup>6</sup>

42. There is no doubt that there are people who need to remain in prison for the rest of their lives because they are unwilling or unable to change and remain a threat to society. But how can a governor know who is a threat and who is not?

43. People can change so much in prison that their current selves are unrecognizable from their earlier selves. One of the most poignant examples is probably Jacques Fesch, convicted of

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<sup>5</sup> Pope John Paul II, *Homily at the Papal Mass in St. Louis, Missouri* (Jan. 27, 1999), para. 5, [https://www.vatican.va/content/john-paul-ii/en/travels/1999/documents/hf\\_jp-ii\\_hom\\_27011999\\_stlouis.html](https://www.vatican.va/content/john-paul-ii/en/travels/1999/documents/hf_jp-ii_hom_27011999_stlouis.html) (last accessed on Nov. 23, 2024).

<sup>6</sup> Pope Francis, Encyclical Letter *Fratelli Tutti* of the Holy Father Francis on Fraternity and Social Friendship (Oct. 3, 2020), para. 268, [https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco\\_20201003\\_enciclica-fratelli-tutti.pdf](https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20201003_enciclica-fratelli-tutti.pdf) (last accessed on Nov. 23, 2024).

robbery murder and executed in France in 1957. After his conversion in prison, he changed so much that he became an inspiration for many Catholics and his cause for beatification has been opened.

Jacques Fesch reminds us that behind every state-sanctioned murder is a human being with hopes, fears, longings and, however, deeply buried, the fundamental idea of God. He reminds us of the central Catholic tenet that every soul is redeemable. He reminds us that our Lord was himself the victim of capital punishment – and that one of his last acts was to turn to the repentant thief beside him and say, “This day you shall be with me in paradise.”<sup>7</sup>

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<sup>7</sup> Heather King, *Light Upon the Scaffold: The Prison Letters of Jacques Fesch*, WORDONFIRE.ORG (July 10, 2017), <https://www.wordonfire.org/articles/light-upon-the-scaffold-the-prison-letters-of-jacques-fesch/>.

## REASONS FOR GRANTING THE WRIT

44. The constitutional protection of individuals from arbitrary and oppressive actions by those in power is a matter of great public concern and national importance.
45. Many statements and debates during and following the most recent presidential campaigns are directly related to this issue. To cite but a few:
- (a) Former Trump advisor Steve Bannon claimed that Vice President Harris prevented his early release.<sup>8</sup>
  - (b) President Biden raised public concern when he stated that his former rival Donald Trump needed to be locked up politically. Donald Trump made similar remarks with regard to Hillary Clinton during his presidential campaign in 2016.<sup>9</sup>
  - (c) When recently asked if he would consider pardoning Hunter Biden if he was elected, Donald Trump stated that he did not want to hurt people.<sup>10</sup>
  - (d) After Donald Trump was elected as the new President of the United States, Senator Ron Johnson expressed his opposition to a presidential pardon for Hunter Biden, warning against a “dual system of justice where the powerful, or the sons and daughters of the powerful, get off scot-free.”<sup>11</sup> However, Senator Johnson is not opposed to a commutation

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<sup>8</sup> Kari Donovan, *Steve Bannon Unleashed: 'Kamala Harris is Illegally Holding Me Prisoner to Sabotage the Election!'*, WARROOM.ORG (Oct. 18, 2024), <https://warroom.org/steve-bannon-unleased-kamala-harris-is-illegally-holding-me-prisoner-to-sabotage-the-election/>.

<sup>9</sup> Louis Casiano, Paul Steinhauser: *Biden calls for Trump to be 'politically' locked up at New Hampshire event. Trump previously called for Hillary Clinton to be imprisoned during his 2016 presidential campaign*, FOXNEWS.COM (Oct. 22, 2024, 06:46 pm EDT), <https://www.foxnews.com/politics/biden-calls-trump-politically-locked-new-hampshire-event>.

<sup>10</sup> *Trump addresses whether he would consider pardoning Hunter Biden*, FOXNEWS.COM (Oct. 24, 2024, 02:05), <https://www.foxnews.com/video/6363716053112>.

<sup>11</sup> Chris Pandolfo, *Republican senator says Trump should not pardon Hunter Biden. Ron Johnson said a pardon for Hunter Biden would create a 'dual system of justice'*, FOXNEWS.COM (Nov. 8, 2024, 02:02 pm EST), <https://www.foxnews.com/politics/republican-senator-says-trump-should-not-pardon-hunter-biden>.

or reduction of Hunter Biden's sentence "as a show of good will and effort to unify the country."<sup>12</sup>

46. These examples show the relevance of the issue at hand and the urgency that it be addressed. There is at least a concern that people are being favored or disadvantaged with regard to their sentences for mere political reasons.
47. When a president or governor does not grant clemency, he or she *passively* hurts a person by not giving that person a free gift. It is not compatible with the office of president or governor if such decision is taken for political gain. It should be based on evidence and reason. The issue at hand, however, is mock clemency, i.e., a governor's or president's abuse of his or her right to grant clemency to *actively* hurt an individual.
48. If mock clemency was allowed, President Trump could minimally reduce Hunter Biden's sentence to prevent its review and significant reduction by the courts. The same could happen to President Trump if, at one point, he had to fight sentences himself. Petitioner does in no way suggest that President Trump or any future president would act like that. This would be malicious and unjust. However, it happened in multiple cases throughout the country, including the case at hand.
49. As shown above, the courts reacted differently to the governors' actions. This disparity in decisions of U.S. state courts on one and the same issue makes a review of the U.S. Supreme Court necessary, even more so as this issue touches the doctrine of the separation of powers which is at the heart of any modern constitution.

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<sup>12</sup> *Ibid.*

50. The punishment of defendants in criminal cases should be reserved to the judicial branch alone. The only overlap from the executive branch that should be allowed and even welcomed is true clemency. If an act that is formally based on the right to grant clemency is not favorable to a defendant, in particular if it was not requested and even opposed by the defendant, the courts should put the defendant in the same favorable position as if the governor or president had never acted, as it was correctly done in *State v. Ragland*.
51. In *State v. Ragland*, the Supreme Court of Iowa took a decision that is based on reason and human dignity and the protections it provides to the individual reflect the true meaning of both federal and state constitutions and make the legal system more just and humane. These protections should therefore be expanded from Iowa to the entire country.

### CONCLUSION

52. The petition for a writ of certiorari should be granted.

Respectfully submitted,

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